



July 26, 1999

Mr. Clark Cornwell
Border Projects Management Division
Texas Water Development Board
P. O. Box 13231
Austin, Texas 78711-3231

OR99-2087

Dear Mr. Cornwell:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125982.

The Texas Water Development Board (the "board") received two requests for information from the same requestor. The first request asks for "all files and correspondence relating to the Lakeside and Lake City colonia projects." The second request seeks "access to the residential surveys performed for the Lakeside and Ingleside on the Bay facility for projects under the board's economically distressed areas program." In response to the requests, you submit to this office for review a representative sample of the information at issue.¹ You contend that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law and constitutional privacy.² We have considered your arguments and claimed exception, and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy. Common-law privacy protects information if

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We assume that you will release other responsive records to the extent they exist, since you have not raised any other exception nor submitted other records.

(1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In your brief to this office, you state that

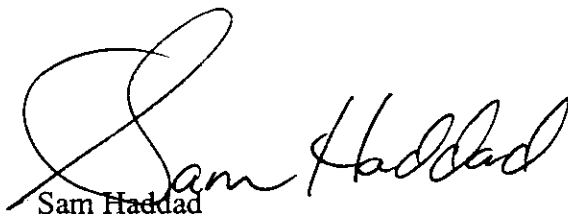
the Board provides grants to political subdivisions to conduct facility engineering plans to determine water and wastewater needs in economically distressed areas. In order to determine whether or not an area meets eligibility criteria for other state funding and to document consultation with residents of the planning area, a facility planning includes individual surveys of planning area residents. These residential surveys are questionnaires requesting information ranging from the respondent's name and address to the gross household income.

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

You assert that “[b]ecause the survey responses contain private financial information and other information relating to private facts about each respondent, a Section 552.101 exception is claimed, both for common-law privacy interests and constitutional privacy.” This office has previously concluded that financial information ordinarily satisfies the first requirement of common-law privacy in that it constitutes highly intimate or embarrassing facts about the individual.³ See Open Records Decision No. 373 (1983). Based on our review of the submitted records, we conclude that most of the information, in the general form set out in the questionnaire and table, is not protected by section 552.101 in conjunction with privacy interests. However, a portion of the submitted questionnaires contains personal financial information which we believe is protected under common-law privacy. See Open Records Decision Nos. 600 (1992). Accordingly, we have *marked* the type of information which must be withheld from required disclosure pursuant to section 552.101 in conjunction with common law privacy. The remaining information within the questionnaires, responses, and table may not be withheld from required public disclosure pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 125982

Encl. Submitted documents

³Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. Open Records Decision No. 626 at 3 (1994).

cc: Mr. John McCormack
San Antonio Express-News
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(w/o enclosures)